

Application No.: 10/796,609
Filing Date: March 9, 2004

REMARKS

In response to the final Office Action mailed October 8, 2008, Applicants respectfully request the Examiner to reconsider the above-captioned Application in view of the foregoing amendments and the following remarks.

Summary of the Office Action

In the October 8, 2008 final Office Action, Claims 1, 5-19, and 21-27 stand rejected. In addition, Claims 20 and 28 stand objected to as being dependent upon a rejected base claim. First, Claim 27 stands rejected under 35 U.S.C. § 112, first paragraph. Next, Claims 9-19, 21, and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,250,415 issued to Seto (hereinafter “Seto”). Further, Claims 9-19 and 21-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,798,400 issued to Kosuge (hereinafter “Kosuge”). Furthermore, Claims 1, 5-8, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kosuge. Finally, Claims 9-19 and 21-24 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kosuge in view of Seto.

Summary of the Amendment

By this paper, Applicants have amended Claims 1, 6, 7, 9-19, and 24, canceled Claims 27-28, and added Claims 29-37. Accordingly, Claims 1, 5-26, and 29-37 are currently pending in the present Application. By this paper, Applicants respond to the Examiner’s comments and rejections made in the October 8, 2008 final Office Action. Applicants respectfully submit that the present Application is in condition for allowance.

Allowable Claims

In the final Office Action, Claims 20 and 28 stand objected to as being dependent upon a rejected base claim. Applicants gratefully acknowledge the Examiner’s indication of allowable subject matter. As discussed further below, Applicants have incorporated subject matter of Claim 28 into independent Claim 1. Further, Applicants have also incorporated subject matter of Claim 28 into independent Claims 6 and 7. Accordingly, Applicants believe that each of these independent claims is now in condition for allowance.

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In re Rejection under 35 U.S.C. § 112, First Paragraph

In the final Office Action, Claim 27 stands rejected under 35 U.S.C. § 112, first paragraph. Applicants respectfully traverse the present rejection of Claim 27. However, in order to expedite prosecution of the present Application, Applicants have canceled Claim 27. Thus, the present rejection is now moot.

In re Rejection under 35 U.S.C. § 102(b) Based on Seto

In the final Office Action, Claims 9-19, 21, and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Seto. While Applicants reserve the right to prosecute Claim 9 as originally filed, Applicants have also amended Claim 9 in order to expedite prosecution of this Application. Accordingly, Applicants respectfully request that the rejection of Claim 9, as well as that of Claims 10-19, 21, and 24 be withdrawn and that these claims be indicated as allowable over the art of record.

Seto is directed to an all terrain vehicle that comprises a frame having seat rails 34 and a lower frame 30 that has a rear portion 35 that bends upwardly toward the rails 34. *See* Seto, col. 3, lines 42-59. This arrangement is illustrated below in Figure 1 of Seto.

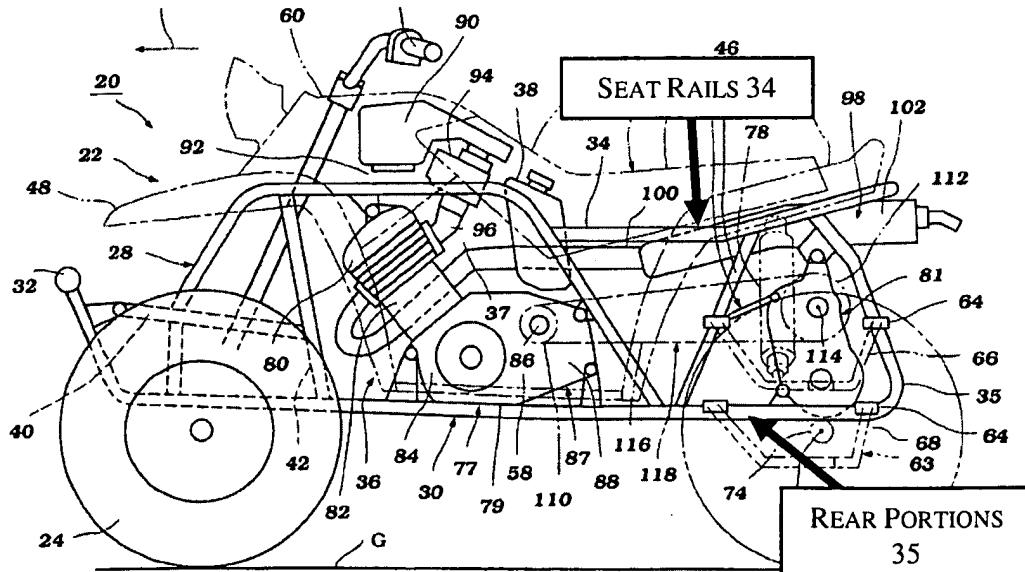
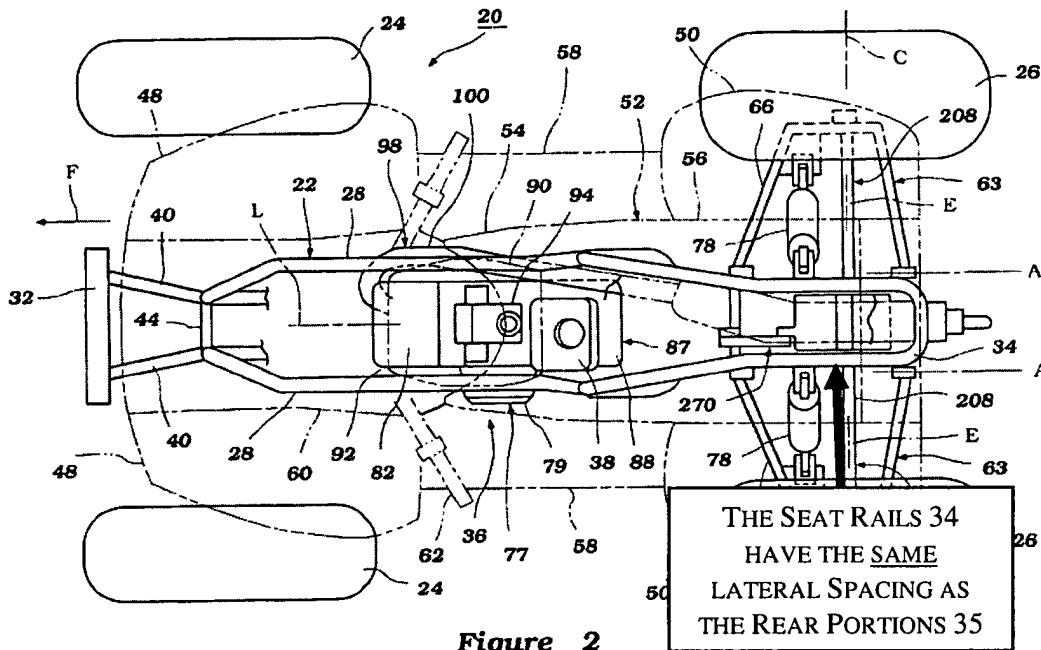


Figure 1

Further, as shown in Figure 2 of Seto below, the seat rails 34 are spaced at lateral spacing that is less than or equal to the lateral spacing of the rear portions 35. In other words, the seat rails 34, which are positioned above the rear portions 35, have a lateral spacing or width that is equal to or narrower than a lateral spacing or width of the rear portions 35. Thus, no portion of the seat rails 34 is laterally spaced wider than any portion of the rear portions 35.



In contrast, Claim 9 of the present Application recites an off-road vehicle comprising, *inter alia*, a frame comprising first and second groups of frame members configured with "the first and second groups each defining rear portions that are positioned behind the engine and extend in a longitudinal direction of the vehicle, the rear portions of the first group being at least partially vertically offset above the rear portions of the second group when viewed from a lateral view, the rear portions of the first group being spaced apart from each other wider than the rear portions of the second group." Applicants respectfully submit that Seto fails to teach at least the above-noted features of Claim 9.

Figure 1 of the present Application, shown below, illustrates a non-limiting embodiment of the off-road vehicle within the scope of Claim 9. Figure 1 illustrates that the rear portions of the first group are at least partially disposed above the rear portions of the second group.

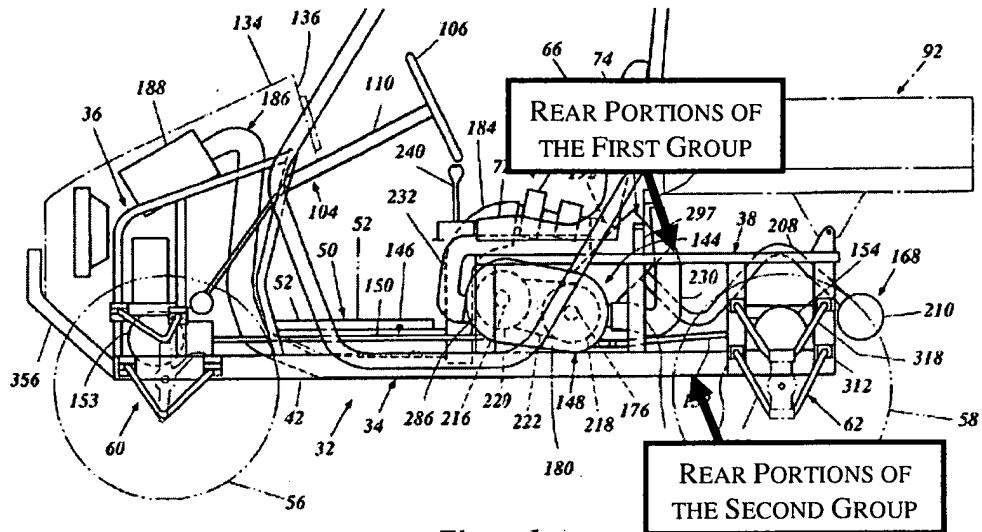


Figure 1

Figure 8, shown below, also illustrates a non-limiting embodiment in which the rear portions of the first group are spaced apart from each other wider than the rear portions of the second group. In this embodiment, the lateral spacing of the rear portions of the first group is greater than the lateral spacing of the rear portions of the second group.

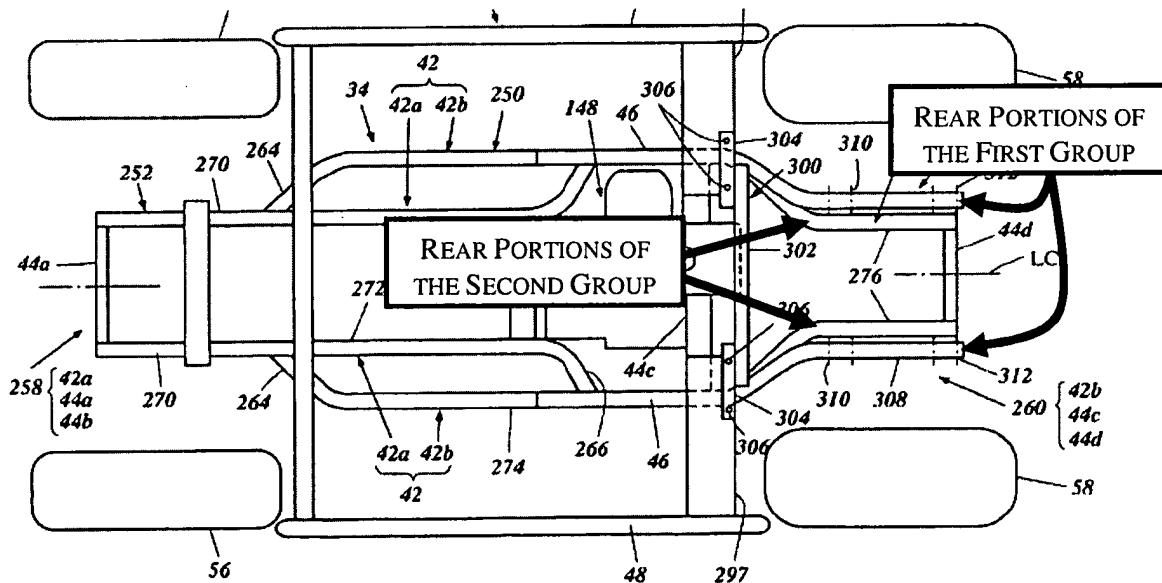


Figure 8

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Differential lateral spacing of the rear portions of the first and second groups of frame members provides unique advantages not present in the prior art. For example, because of the difference in the lateral spacing of the rear portions of the first and second groups of frame members, the support members 310, 312 can be positioned “slightly inclined and outward.” *See Present Application, ¶¶ [0118]-[0119].* This configuration provides significant advantages, as noted in Paragraph [0128] of the present Application:

[T]he roll resistance of the off-road vehicle 30 while turning can be greatly improved where the support members 310, 312 are inclined outward and the lower suspension arm 320 is longer than the upper suspension arm 318.

See id. at ¶ [0128] (emphasis added). Moreover, unlike the prior art, the “illustrated rear suspension mounting construction thus can provide various vertical positions (i.e., elevations) of the suspension arms 318, 320 without changing a major portion of the fundamental framework of the off-road vehicle 30 or without requiring rearrangement of the fundamental framework.” *See id.* at ¶ [0127].

Finally, the frame construction resulting from these advantageous features provides yet other advantages. For example, as discussed in Paragraph [0128] of the present Application, “no specific brackets for the mount members 328 are necessary because the mount members 328 are directly affixed to the support members 310, 312. Thus, the number of weld joints, for example, can be reduced to keep the frame 32 strong. Production cost of the off-road vehicle 30 also can be reduced, accordingly.” *See id.* at ¶ [0128] (emphasis added).

Applicants respectfully submit that Seto fails to disclose any of the above features or advantages. Therefore, for at least these reasons, Applicants respectfully request that the Examiner withdraw the rejection of Claim 9, as well as the rejection of Claims 10-19, 21, and 24, and indicate at that these claims are allowable over the art of record.

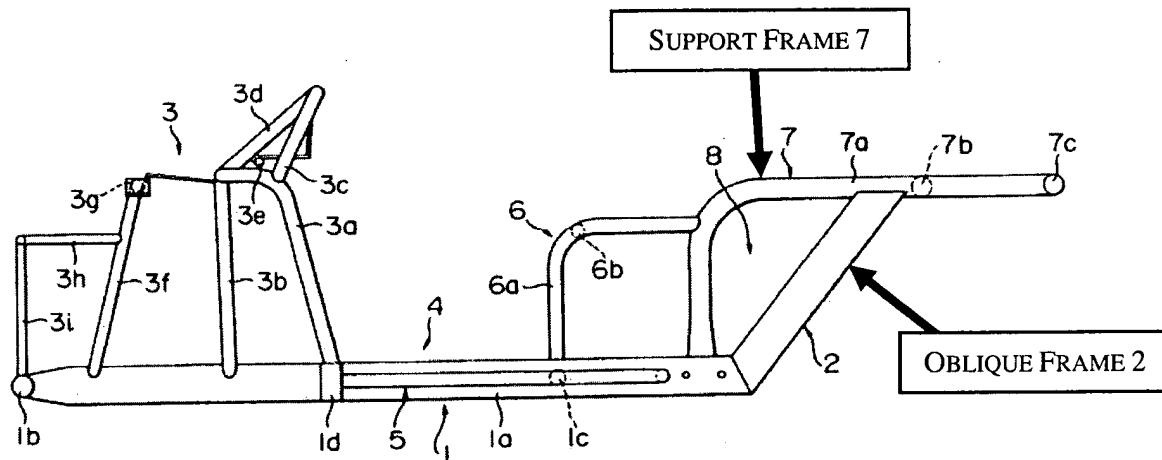
In re Rejection under 35 U.S.C. § 102(b), Based on Kosuge

In the final Office Action, Claims 9-19 and 21-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kosuge. While Applicants reserve the right to prosecute Claim 9 as originally filed, Applicants have also amended Claim 9 in order to expedite prosecution of this Application. Accordingly, Applicants respectfully request that the rejection of Claim 9, as well

as that of Claims 10-19 and 21-24 be withdrawn and that these claims be indicated as allowable over the art of record.

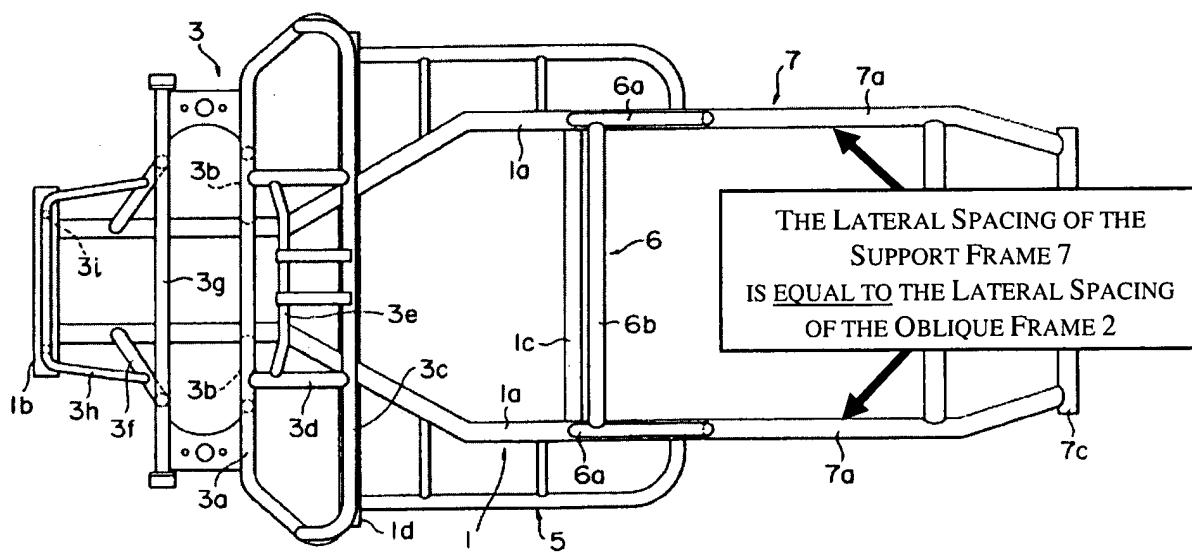
Kosuge discloses a vehicle frame that includes a main frame 1, an oblique frame 2, a seat fitting frame 6, and a propulsion apparatus support frame 7 comprising a pair of L-shaped pipes 7a. *See* Kosuge, col. 2, line 31 – col. 3, line 40.

FIG. 1



Further, as shown in Figure 1 below, Kosuge illustrates that the support frame 7 and the oblique frame 2 are spaced at an equal lateral spacing. In other words, the support frame 7 and the oblique frame 2 overlap when viewed from above, as in Figure 2.

FIG. 2



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In contrast, Claim 9 of the present Application recites an off-road vehicle comprising, *inter alia*, a frame comprising first and second groups of frame members configured with “the first and second groups each defining rear portions that are positioned behind the engine and extend in a longitudinal direction of the vehicle, the rear portions of the first group being at least partially vertically offset above the rear portions of the second group when viewed from a lateral view, the rear portions of the first group being spaced apart from each other wider than the rear portions of the second group.” Applicants respectfully submit that Kosuge fails to teach at least the above-noted features of Claim 9.

As discussed above with respect to Seto, Figure 1 of the present Application, shown below, illustrates a non-limiting embodiment of the off-road vehicle that is within the scope of Claim 9. Figure 1 illustrates that the rear portions of the first group are at least partially disposed above the rear portions of the second group.

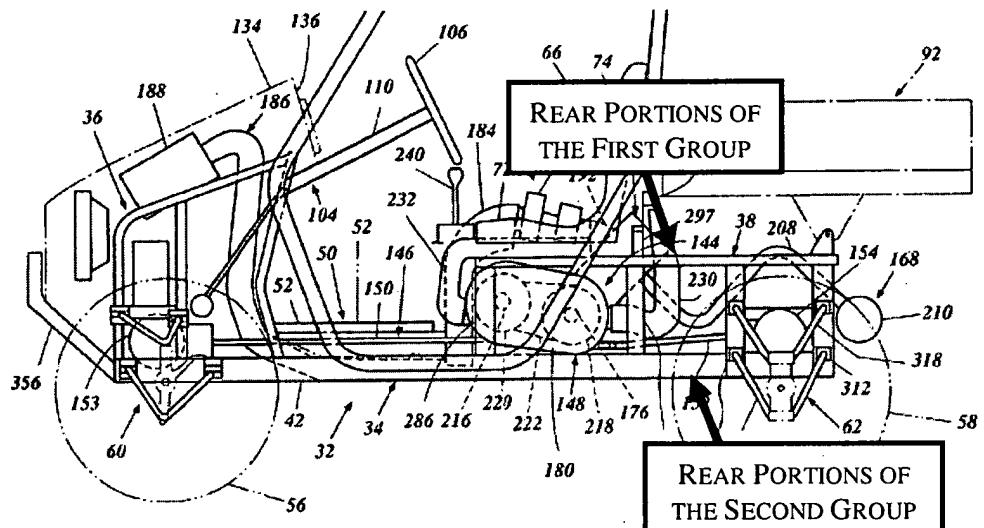


Figure 1

Figure 8, shown below, also illustrates a non-limiting embodiment in which the rear portions of the first group have a lateral spacing that is different from a lateral spacing of the rear portions of the second group. In this embodiment, the lateral spacing of the rear portions of the first group is greater than the lateral spacing of the rear portions of the second group.

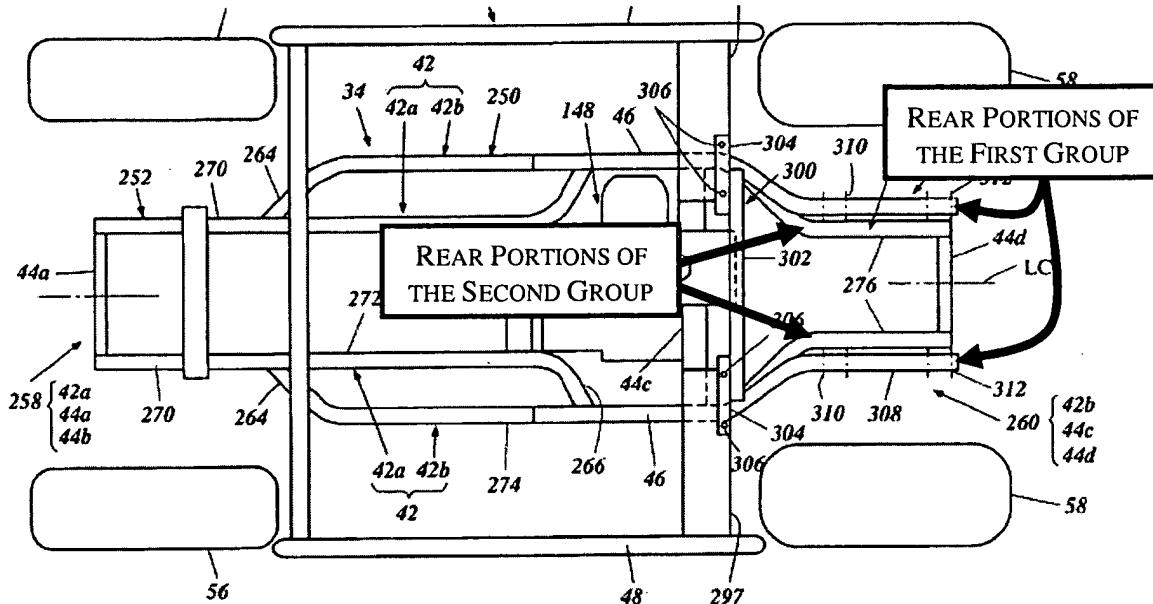


Figure 8

Additionally, the differential lateral spacing of the rear portions of the first and second groups of frame members provides unique advantages not present in the prior art. For example, because of the difference in the lateral spacing of the rear portions of the first and second groups of frame members, the support members 310, 312 can be positioned “slightly inclined and outward.” *See Present Application, ¶¶ [0118]-[0119].* This configuration provides significant advantages, as noted in Paragraph [0128] of the present Application:

[T]he roll resistance of the off-road vehicle 30 while turning can be greatly improved where the support members 310, 312 are inclined outward and the lower suspension arm 320 is longer than the upper suspension arm 318.

See id. at ¶ [0128] (emphasis added). Moreover, unlike the prior art, the “illustrated rear suspension mounting construction thus can provide various vertical positions (i.e., elevations) of the suspension arms 318, 320 without changing a major portion of the fundamental framework of

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the off-road vehicle 30 or without requiring rearrangement of the fundamental framework.” *See id.* at ¶ [0127].

Finally, the frame construction resulting from these advantageous features provides yet other advantages. For example, as discussed in Paragraph [0128] of the present Application, “no specific brackets for the mount members 328 are necessary because the mount members 328 are directly affixed to the support members 310, 312. Thus, the number of weld joints, for example, can be reduced to keep the frame 32 strong. Production cost of the off-road vehicle 30 also can be reduced, accordingly.” *See id.* at ¶ [0128] (emphasis added).

Applicants respectfully submit that Kosuge fails to disclose any of the above features or advantages. Therefore, for at least these reasons, Applicants respectfully request that the Examiner withdraw the rejection of Claim 9, as well as the rejection of Claims 10-19, 21, and 24, and indicate at that these claims are allowable over the art of record.

In re Rejections under 35 U.S.C. § 103(a), Based on Kosuge

In the final Office Action, Claims 1, 5-8, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kosuge. While Applicants reserve the right to prosecute these claims as originally filed, Applicants have also amended Claims 1, 6, and 7 in order to expedite prosecution of this Application. Accordingly, Applicants respectfully request that the rejection of Claims 1, 6, and 7 be withdrawn and that these claims, as well as Claims 5, 8, 25, and 26 that depend from these Claim 1, be indicated as allowable over the art of record.

As noted above, Applicants have incorporated the subject matter of Claim 28 into Claims 1, 5, and 6. Applicants respectfully submit that these claims are allowable over the art of record and request that the Examiner indicate allowance of the same. Further, Claims 5, 8, 25, and 26 should be allowable based on their own merit and for at least the reason that these claims depend from an allowable independent base claim.

Therefore, for at least these reasons, Applicants respectfully request that the Examiner withdraw the rejection of Claims 1, 5-8, 25, and 26, and indicate at that these claims are allowable over the art of record.

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In re Rejections under 35 U.S.C. § 103(a), Based on Kosuge in view of Seto

In the final Office Action, Claims 9-19 and 21-24 stand rejected under 35 U.S.C. § 103(a) as being obvious over Kosuge in view of Seto. Applicants respectfully traverse this rejection and submit that as discussed above, neither Kosuge nor Seto disclose or teach each and every feature recited in Claim 9. Therefore, for at least these reasons, Applicants respectfully request that the Examiner withdraw the rejection of Claim 9, as well as the rejection of Claims 10-19 and 21-24, and indicate at that these claims are allowable over the art of record.

New Claims 29-37

Applicants hereby submit new Claims 29-37 for consideration which are fully supported by the specification as originally filed. Thus no new matter has been introduced. Claims 29-36 are dependent claims that depend from Claim 9, and thus are believed to be allowable not only because they depend from allowable independent base claims, but also on their own merit. Further, Claim 37 is an independent claim based on the subject matter of dependent Claim 20, written in independent form and believed to be allowable based on the Examiner's previous indication that Claim 20 contains allowable subject matter. Accordingly, Applicants respectfully request that the Examiner indicate that Claims 29-37 are allowable over the art of record.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

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Patents and Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following patents co-pending applications of the present application's assignee.

Serial Number	Title	Filed	Atty Docket No.
7,147,075	ENGINE ARRANGEMENT FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51034US1A
7,147,076	DRIVE SYSTEM FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51035US1A
7,287,619	AIR INTAKE SYSTEM FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51036US1A
7,367,417	FLOOR ARRANGEMENT FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51037US1A
7,357,211	STEERING SYSTEM FOR OFF-ROAD VEHICLE	March 5, 2004	FY.51038US1A
10/791,164	OFF ROAD VEHICLE WITH AIR INTAKE SYSTEM	March 2, 2004	FY.51039US1A
11/775,772	OFF ROAD VEHICLE WITH AIR INTAKE SYSTEM	July 10, 2007	FY.51039US2C1
10/796,692	OFF-ROAD VEHICLE WITH WHEEL SUSPENSION	March 9, 2004	FY.51040US1A
10/803,274	TRANSMISSION FOR OFF-ROAD VEHICLE	March 18, 2004	FY.51043US1A
11/775,442	TRANSMISSION FOR OFF-ROAD VEHICLE	July 10, 2007	FY.51043US2C1

CONCLUSION

Applicants respectfully submit that the above rejections and objections have been overcome and that the present Application is now in condition for allowance. Therefore, Applicants respectfully request that the Examiner indicate that Claims 1, 5-26, and 29-37 are now acceptable and allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that

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portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present Application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper reason exists to combine these references and to submit indicia of the non-obviousness of the claimed management system.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 7, 2009

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